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No. 83-1732

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1983

BETTY C. PHILLIPS,
Petitioner

v.

T.V.A. ENGINEERING ASSOCIATION, INC., VERNON DRAKE, JAMES EICKMAN, KEN SMITH, KATHY WATSON, and PATRICIA LYON (CURETON),
Respondents

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Bernard E. Bernstein
BERNSTEIN, SUSANO, STAIR & COHEN
Sixth Floor
First Tennessee Bank Building
Knoxville, TN 37902
Counsel for Respondents

July 10, 1984

PACKARD PRESS / LEGAL DIVISION, 10th & SPRING GARDEN STREETS, PHILA., PA. 19123 (215) 236-2000

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QUESTIONS PRESENTED

1. Whether 28 U.S.C. §636(c)(1) and (3) violate Article III of the United States Constitution by authorizing entry of final judgments and direct review in the Courts of Appeals upon consent of the parties by United States Magistrates.

2. Whether a writ of certiorari should be granted to reexamine factual findings which were concurred in by the Magistrate and the Court of Appeals.

3. Whether the alleged incompetence of Petitioner's counsel in this civil case is a basis for overturning the Court's finding that discrimination did not exist.

4. Whether the constitutionality of 28 U.S.C. §636(c) and/or the alleged coercion of consent to refer the case to the Magistrate can be raised for the first time in a Petition for Writ of Certiorari to this Court.

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Respondents

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Respondents file this Brief in Opposition to the Petition for Writ of Certiorari filed by the Petitioner in this cause seeking a review of the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on October 5, 1983.

OPINION BELOW

The unreported opinion of the Court of Appeals appears in Appendix A to the Petition for Writ of Certiorari filed by the Petitioner herein. The Opinions of the Magistrate appear in Appendix B-3 and B-4 of the Petition for Writ of Certiorari filed by the Petitioner herein.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

All constitutional provisions, statutes, regulations, and rules are set forth in Appendix C to the Petition for Writ of Certiorari or in Appendix D to this Brief.

STATEMENT OF THE CASE

Petitioner, Betty Phillips, was hired on June 7, 1979, by the Respondent T.V.A. Engineering Association, Inc. (hereinafter "TVAEA"), a labor organization representing employees of the Tennessee Valley Authority. She was terminated in June, 1981. (Magistrate's Memorandum Opinion at Appendix B-4, page A-16 of the Petition for Writ of Certiorari filed by the Petitioner herein, hereinafter referenced as "App. B-4 at p. "; Opinion of the United States Court of Appeals for the Sixth Circuit contained in Appendix A of the Petition for Writ of Certiorari at page A-2, hereinafter referenced "App. A at p. "). Ms. Phillips had satisfactory work evaluations through December, 1980, though she did have some problems with interpersonal relations during that time (App. A at p. A-2).

Beginning in February 1981, Ms. Phillips began to have serious problems with interpersonal relations in the work environment (App. A at p. A-2). The record is clear that on many occasions Ms. Phillips openly or impliedly threatened lawsuits against her supervisor and persons with whom she worked (App. A at p. A-2 and App. B-4 at p. A-19). Further, Ms. Phillips deliberately refused to speak to some members of the TVAEA staff with whom she worked. This resulted in tension in the office (App. A at p. A 2, A-3 and App. B-4 at p. A-20)

In March, 1981 the Executive Committee of TVAEA held a meeting and directed Ms. Phillips' supervisor to remedy problems that had been created within the TVAEA office by Ms. Phillips (App. A at p. A-2 and A-3). The Executive Director and Supervisor, Mr.

Eickman and Vernon Drake, President of TVAEA, held a meeting with Ms. Phillips in March, 1981 for the purpose of warning her that further threats against members of TVAEA and/or her supervisor could result in her termination (App. A at p. A-3 and App. B-4 at p. A-19). Ms. Phillips refused to accept the criticisms of her superiors, used foul language and swore at her supervisor, and continued to threaten to sue her supervisor if he disciplined her in any way (App. A at p. A-3 and App. B-4 at p. A-19). Between March 16, 1981 and May 15, 1981 Mr. Eickman continued to meet with Ms. Phillips to try to correct her misconduct and she continued to deny blame for the office tensions and continued to threaten her supervisor (App. A at p. A 3 and App. B-4 at p. A-19). Because Ms. Phillips' conduct was not improving and because her misconduct was adversely impacting the TVAEA office, Mr. Eickman recommended Ms. Phillips termination at an Executive Committee meeting held on May 15, 1981. At that time he presented a report concerning Ms. Phillips' misconduct (App. A at p. A-3 and App. B-4 at p. A-21).

The Executive Committee invited Ms. Phillips to address the May 15 meeting concerning her proposed termination. She first presented general grievances regarding her work situation and complaints regarding her supervisor. At the end of her presentation, she charged that Mr. Eickman had harassed her sexually by holding money out to her, standing very close to her, and saying in a seductive voice "would you like to make a little extra money?" (App. A at p. A-3 and App. B-4 at p. A-19 thru A-21).

Because of Ms. Phillips' charges of sexual harassment, the Executive Committee determined not to act upon her proposed termination and a committee was appointed to investigate her charges (App. A at p. A-3 and App. B-4 at p. A-21). The committee investigated the charges by speaking with each and every TVAEA employee regarding the office situation generally and spe-

4. Involvement in any unauthorized strike, work stoppage, slowdown, or any other activity having the effect of curtailing the work or otherwise disrupting the job.

5. Failure to return to work, when involved in a violation of the Agreement, as instructed by either a Local Lodge or International officer of the Union.

6. Insistence on recognizing illegal or unauthorized picket lines.

7. Interference with proper administration or referral procedures.

NOTE: All penalties imposed under this article shall be reported immediately on the appropriate form to the National Joint Rules and Standards Committee. Penalties for violations under paragraphs 4, 5, 6 and 7 of Section 7.3 will be applied nationwide by the National Joint Rules and Standards Committee.

Section 7.4 Violations disruptive of the industry, such as acts of violence, acts of sabotage or serious chronic violations of referral rules will be referred to the National Joint Rules and Standards Committee for action. Such violations shall be cause for serious disciplinary action up to and including permanent removal from all out-of-work lists governed by the National Joint Rules and Standards.

Section 7.5 Employers shall cooperate with the Union by giving to the appropriate union official adequate oral and written report of all terminations, stating time, date, and reason.

Article 8. Change or Modification

The Rules, Regulations and Standards may be changed or modified from time to time by the Joint Referral Rules

Committee, subject to the provisions of Article 2, Section 2.3.

Article 9. General Savings Clause

It is not the intent of the Joint Referral Rules Committee in operating under the Rules, Regulations and Standards set forth herein to violate any laws or any rulings of any governmental authority or State agency having jurisdiction of the subject matter contained herein, and it is understood and agreed between the members of the Joint Referral Rules Committee that, in the event any provision or provisions of the Rules, Regulations and Standards shall be held to be contrary to law, it shall not affect any other provisions hereof.

EFFECTIVE as amended this 26 day of September, 1978.

AREA JOINT REFERRAL
COMMITTEE

For the Employers:

David Hovey
Melvin Wiltsie
J. J. Doyle
Keith Dean

For the Union:

Local 29—Boston, Mass.
Walter Rees
Local 175—Oswego, N. Y.
Kenneth Oswald
Local 197—Albany, N. Y.
A. Rossi
Local 237—Hartford, Conn.
D. Dupuis

Approved February 16, 1978
National Joint Rules and Standards
Committee

For the Union:

/s/ Charles W. Jones
/s/ David L. Lewis
/s/ Joseph C. Meredith

For the Employers:

/s/ R. N. McGlothlin
/s/ J. F. Erickson
/s/ R. B. Sierra

Representing the Employers:

/s/ J. L. Darus, Chairman
/s/ G. Roth, Sec.-Treas.
/s/ D. C. Hovey
/s/ J. J. Doyle
/s/ D. Freeman
/s/ W. Osborne
/s/ P. Wiltsie

Representing the Union:

/s/ H. Nacey, Chairman
/s/ David Dupuis, Secy.
/s/ A. L. Rossi
/s/ Fredrick Hayes
/s/ Kenneth Oswald

This Agreement, as negotiated by the foregoing committees at Boston, Massachusetts, is hereby accepted by the parties signatory hereto this ..... day of ....., 19....., with the full understanding that this Agreement is between the Union and the individual signatory Employers.

Representing the Union:

/s/ H. Nacey, Chairman
/s/ David Dupuis, Secy.
/s/ A. L. Rossi
/s/ Fredrick Hayes
/s/ Kenneth Oswald

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